

**FILED**

**JUN 12 2008**

By **PATRICK E. DUFFY, CLERK**  
**DEPUTY CLERK, MISSOULA**

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
MISSOULA DIVISION

LAWRENCE ROEDEL,	)	CV 08-30-M-DWM-JCL
	)	
Plaintiff,	)	
	)	
vs.	)	ORDER
	)	
TODD GARDNER, DAVAR M. GARDNER,	)	
and DONOVAN BERGESON,	)	
	)	
Defendants.	)	
	)	

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Plaintiff Roedel has filed an Amended Complaint alleging a fraudulent transfer of property. United States Magistrate Judge Jeremiah C. Lynch conducted preliminary screening of the Complaint as required by 28 U.S.C. §§ 1915 and 1915A. Under that statute, the court engages in a preliminary screening to assess the merits of the claims and identify cognizable claims, or dismiss the complaint or any portion thereof if the complaint is frivolous, malicious, or fails to state a claim upon which relief can be granted.

Judge Lynch entered Findings and Recommendations on May 20, 2008, in which he recommends that the Amended Complaint be dismissed under the doctrine of res judicata. Judge Lynch explained that Plaintiff Roedel failed to show why this action does not involve the same claims and parties as the Montana State case Thompson v. Roedel (2007), 340 Mont. 380. The Magistrate

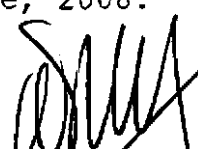
also noted that the Amended Complaint would require this Court to review a final state court judgment, which is prohibited by the Rooker-Feldman doctrine. Due to these deficiencies, Judge Lynch recommends that the Amended Complaint be dismissed and that this case count as a "strike" under the Prison Litigation Reform Act, 28 U.S.C. § 1915(g).

Plaintiff Roedel did not timely object and so has waived the right to de novo review of the record. 28 U.S.C. § 636(b)(1). This Court will review the Findings and Recommendation for clear error. McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc., 656 F.2d 1309, 1313 (9th Cir. 1981). Clear error exists if the Court is left with a "definite and firm conviction that a mistake has been committed." United States v. Syrax, 235 F.3d 422, 427 (9th Cir. 2000). I can find no clear error with Judge Lynch's Findings and Recommendations and therefore adopt them in full.

Accordingly, IT IS HEREBY ORDERED that the Amended Complaint is DISMISSED as precluded under the doctrine of res judicata.

IT IS FURTHER ORDERED that this dismissal shall count as a strike pursuant to 28 U.S.C. § 1915(g). The Court certifies pursuant to Rule 24(3)(1) of the Federal Rules of Appellate Procedure that any appeal of this decision would not be taken in good faith.

DATED this 12<sup>th</sup> day of June, 2008.

  
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Donald W. Molloy, District Judge  
United States District Court